Supreme Court, U.S.
FILED
JAN 7 1992
OFFICE OF THE CLERK

SHELF COPY

(4)

NO. 91-751

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1991

SULTAN ALLIBHAI AND YASMIN ALLIBHAI,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

---

REPLY ON PETITION FOR CERTIORARI

J. RONALD SIM
Counsel of Record
LYNN M. REILLY
STOEL RIVES BOLEY JONES & GREY
36th Floor
One Union Square
600 University Street
Seattle, Washington 98101-3197
(206) 624-0900

4 pp

A reply is warranted to the extent the government mischaracterizes the appellate holding and the state of the record. The government treats as a settled question the motive for the investigative targeting in this case. It asserts that the appellate court "rejected petitioners' claim that they were investigated because they were Ismaili Muslims." In fact, because the district court restricted cross-examination on the subject and denied the requested evidentiary hearing, the evidence is incomplete and conflicting on that question. The circumstances leading to Allibhai's selection as a target have never been fully illuminated nor any factual finding made on the subject.

The assertions that the record does not support petitioners' premise and that petitioners failed to make a sufficient factual showing of discriminatory targeting are disingenuous. The trial court denied petitioners the opportunity to develop the record on this question. On appeal, petitioners requested a remand for an evidentiary hearing. The appellate court did not specifically address that request, effectively holding that even if agents chose targets based on religious affiliations, no constitutional violation occurred.

The court did not, as the government asserts, reject that motive as a factual matter.

The government's summary of the evidence on this point is incomplete. Special Agent Scott Marshall, who headed the investigation, did testify that a British Customs agent's tip regarding Sultan Allibhai launched the investigation. What the government leaves out is the same British Customs agent's affidavit to the effect that there never was any investigation of Sultan Allibhai or any tip to American agents.[1] (TS 14; CR 587.)

The government treats as settled a matter that was excluded from evidence at the trial and not addressed by the appellate court. It suggests that petitioners failed to make a sufficient showing, when in fact they were denied the opportunity to develop the record and protested that ruling on appeal! The question of the motive for investigation was not resolved; rather it was held

---

[1] Moreover, the government suggests an affiliation between Nisamudin Alibhai and Sultan Allibhai, implying that the investigation of Nisamudin legitimized the targeting of the Sultan. In fact, no evidence suggested a relationship between the two men. They merely shared a similar last name (the government's brief misspells Nizamudin's name; in fact the two spell their surnames differently) and maintained accounts at the same bank.

inconsequential. It is the propriety of that ruling that is now before the Court.

DATED this 6th day of January, 1992.

Respectfully submitted,

J. RONALD SIM
Counsel of Record
LYNN M. REILLY
STOEL RIVES BOLEY JONES & GREY
36th Floor
One Union Square
600 University Street
Seattle, Washington 98101-3197
(206) 624-0900